



**RESOLUTION NO. 4 4 5 9**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING THE MORATORIUM ESTABLISHED BY RESOLUTION NO. 4300, AND AS AMENDED AND EXTENDED BY RESOLUTION NUMBERS 4321, 4383 AND 4433, ON THE FILING OF CERTAIN LAND USE, BUILDING AND GRADING PERMIT APPLICATIONS IN THE DRAINAGE AREA CONTRIBUTING SURFACE FLOWS TO MILL CREEK TRIBUTARIES 0045, 0047, 0048 AND 0053 AS IDENTIFIED BY KING COUNTY AND AS DEFINED HEREIN, CONTINUING TO BE EFFECTIVE FOR A PERIOD ENDING JUNE 30, 2009

WHEREAS, the City of Auburn and King County previously entered into an Interlocal agreement relating to the annexation of the West Hill Potential Annexation Area, as approved by City of Auburn Resolution No. 4113; and

WHEREAS, King County's Water and Land Resources Division has completed a detailed analysis known as the "Mullen Slough Capital Improvement Project Study and Action Plan (2002)," identifying chronic flooding within the drainage basin, due to a lack of conveyance capacity caused by increased runoff from development and aggradation of sediments in the valley floor channels; and

WHEREAS, although several projects have been identified within the Mullen Slough Capital Improvement Project Study and Action Plan in order to alleviate chronic flooding within the drainage basin, implementation of these Capital Improvement projects by King County, the entity with jurisdiction and control over the area up through the date of annexation, has not occurred; and

WHEREAS, pursuant to its Findings of Fact set forth in Resolution No. 4300, the City Council established a moratorium on the applications for building permits that would result in increased impervious surfaces, for grading permits or for land use approvals shall be accepted in the area as defined therein during the effective period of this moratorium; and

WHEREAS, pursuant to RCW 35A.63.220, the City Council held a public hearing on this moratorium on Tuesday, February 19, 2008, at the City of Auburn City Council Chambers, at which public hearing persons wishing to speak to the moratorium were afforded the opportunity to do so; and

WHEREAS, in light of the testimony and information provided at said public hearing, the City Council modified the moratorium by means of City of Auburn Resolution 4321, removing certain properties and classes of development from the moratorium; and

WHEREAS, the City Council held a public hearing on extending the moratorium on July 21, 2008, and after considering the testimony and information presented at that hearing, adopted Resolution 4383 extending the moratorium until December 31, 2008; and

WHEREAS, King County and City of Auburn staffs have met to discuss the issues and potential remedies surrounding the historic and on-going flooding and drainage problems within the draining basis, have reviewed and continue to evaluate the 2002 King County Mullen Slough Capital Improvement Project Study and Action Plan, and to explore options to deal with the extensive, complex and expensive long-term remedies for the flooding and drainage problems, for which there is no easy or quick solution; and

WHEREAS, during the extension period of the moratorium, the City received a letter dated October 21, 2008 from the Federal Emergency Management Agency ("FEMA"). That letter stated that the National Marine Fisheries Service ("NMFS") was requiring FEMA to modify implementation of the National Flood Insurance Program in such a manner to address NMFS' requirements for mitigating potential "takes" of endangered species as those requirements relate to development in floodplains; and

WHEREAS, in order to ensure that development that does occur within floodplains within the City of Auburn respond in a way that meets the requirements of

FEMA and NMFS, the City adopted Resolution 4416 on November 17, 2008, placing a moratorium on the filing, receipt, and approval of applications for development within areas of the City located within, in whole or in part, identified 100-year floodplains as depicted in the most currently approved floodplain maps as published by FEMA unless the applicants can establish to the City's satisfaction that they are able to meet the requirements of FEMA and NMFS in developing their property in a way that adequately protects the endangered species and that meets the FEMA and NMFS concerns for floodplain development; and

WHEREAS, the State Growth Management Act, Chapter 36.70A RCW and its goals and policies mandate proper planning and consideration of, and the need to thoughtfully implement, storm water systems and programs and capital improvements to address flooding and storm water problems and protection of downstream properties, and such policies and goals further support the need for continuation of the moratorium in Resolution No. 4300 as amended by Resolution No. 4321 and extended by Resolution No. 4383 and Resolution No. 4433; and

WHEREAS, RCW 35.63.200, RCW 35A.63.220 and RCW 36.70A.390 specifically authorize adoption, amendment and extension of a moratorium to allow for thoughtful and proper land use and utility planning, and to involve the public in decision-making; and

WHEREAS, in addition to RCW 35.63.200, 35A.63.220 and 36.70A.390, the State Constitution, Art. XI, §11, as well as the broad and expansive police powers granted to cities like Auburn, and various court decision such as *Weden v. San Juan County*, 135 Wn. 2d 678 (1998), *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995) and *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) also authorize adoption of moratoria to allow for thoughtful and proper land use planning with full public input; and

WHEREAS, in the hearing held in connection with Resolution No. 4433, the City Council heard concerns that support amending the moratorium by adding flexibility to

the parameters of the moratorium by allowing the property of individual owners and permit applicants for existing lots to seek residential improvement during the moratorium so long as the residential improvement mitigates in the discretion of the City Engineer any and all impacts of storm water run-off created or increased by said residential improvement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES AS FOLLOWS:

**Section 1. Findings of Fact.**

A. That the City Council re-adopts and incorporates herein by reference the findings of fact set forth in Resolution No. 4300, Resolution No. 4321, Resolution No. 4383, and Resolution No. 4433. The City Council also adopts the recital clauses of this Resolution as additional findings of fact to support this Resolution and the continuation of the moratorium established by Resolution No. 4300, as amended and extended by Resolution No 4321, Resolution 4383 and Resolution No. 4433, and further amends the moratorium by allowing the owners of existing lots to make improvements to their single family residential property during the moratorium so long as the residential improvement mitigates in the discretion of the City Engineer any and all impacts of storm water run-off created or increased by said residential improvement. That the ten percent (10%) allowance for development provided in Resolution No. 4321 shall no longer apply.

B. That the City Council finds that the protection of the public health, safety, welfare and fiscal integrity of the City of Auburn requires extension of the moratorium established in Resolution No. 4300, as amended and extended by Resolution No. 4321, Resolution No. 4383 and Resolution No. 4433.

C. That the City Engineer is authorized to modify the boundaries of the area included within this Moratorium to conform to the boundaries of existing lots where the previous area delineations cross through existing individual parcels, so long as such modifications are consistent with the purposes of this Moratorium.

**Section 2. Moratorium Continued.** The moratorium established by Resolution No. 4300, as amended and extended by Resolution No. 4321, Resolution No. 4383 and Resolution No. 4433, shall continue to remain in effect for a period

expiring June 30, 2009, unless extended by further action of the City Council; Provided that this Moratorium shall automatically expire upon the effective date of an Ordinance or other legislative enactment that gives the City the resources to regulate the land use in the Drainage Area Contributing Surface Flows to Mill Creek Tributaries 0045, 0047, 0048 and 0053, as identified by King County and as defined herein, so that the City will be able to implement recommendations offered within the Mullen Slough Capital Improvement Project Study and Action Plan.

**Section 3. Severability.** Should any section, paragraph, sentence, clause or phrase of this Resolution, or its application to any person or circumstance, be declared unconstitutional or invalid for any reason, or should any portion of this Resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Resolution or its application to other persons or circumstances.

**Section 4. Implementation.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 5. Effective Date.** This Resolution shall take effect and be in full force upon adoption.

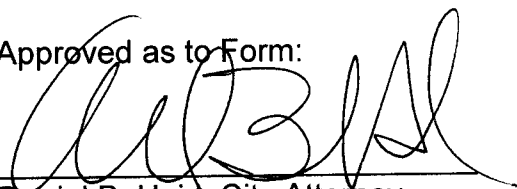
PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Peter B. Lewis, Mayor

Attest

\_\_\_\_\_  
Danielle Daskam, City Clerk

Approved as to Form:

  
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Daniel B. Heid, City Attorney